

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3263NE

United States of America,

Appellee,

v.

John Edward Clark,

Appellant.

*
* On Appeal from the United
* States District Court
* for the District of
* Nebraska.

*
* [Not To Be Published]
*
*

Submitted: January 30, 2001

Filed: February 7, 2001

Before RICHARD S. ARNOLD, FAGG, and MORRIS SHEPPARD ARNOLD,
Circuit Judges.

PER CURIAM.

John Edward Clark pleaded guilty to conspiring to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. § 846, and the District Court¹ sentenced him to six-and-a-half years (seventy-eight months) imprisonment and five years supervised release. On appeal, Clark's counsel has filed a brief and moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967). Counsel suggests

¹The Honorable Thomas M. Shanahan, United States District Judge for the District of Nebraska.

that, although Clark did not move for a downward departure below, the District Court should have granted one sua sponte under U.S.S.G. § 5K2.0. Clark has not filed a pro se supplemental brief.

We decline to reach counsel's downward-departure argument because it is presented for the first time on appeal. See United States v. Favara, 987 F.2d 538, 540 (8th Cir. 1993) (declining to address claim that District Court could have granted § 5K2.0 downward departure because it was not raised below). Having reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues for appeal.

Accordingly, we affirm the judgment of the District Court, and we grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.